

Chapter 12.13

STREET WORK GENERALLY

(3582-11/02, 3780-10/07)

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12.13.005 Purpose. The public rights-of-way are unique public resources held in trust by the City for the benefit of the public. Pursuant to the City Charter and applicable state and federal law, the City is empowered to control access to and use of its public rights-of-way, and unless pre-empted by state or federal law, to obtain reasonable and fair compensation for the use of its public rights-of-way. The purpose and intent of this Chapter is to provide a uniform and comprehensive set of standards and regulations for use of the public right-of-way. These regulations are intended to protect the public health, safety and welfare that permit the installation of utilities and communication facilities in the public right-of-way in such a manner and at such points so as not to incommode the public use of the public's right-of-way. (3780-10/07, 3780-10/07)

12.13.010 Definitions.

- (a) "Applicant" shall mean any owner or duly authorized agent of such owner, who has submitted an application for a permit to excavate. (3582-11/02)
- (b) "City" shall mean the City of Huntington Beach. (3582-11/02)
- (c) "Department" shall mean the Department of Public Works. (3582-11/02)
- (d) "Director" shall mean the Director of the Department of Public Works or his/her designee, and shall include the term "Superintendent of Streets." (3582-11/02)

- (e) "Excavation" shall mean any opening in the surface or subsurface of the public right-of-way. (3582-11/02)
- (f) "Facility" or "facilities" shall mean any and all cables, wires, cabinets, ducts, conduits, converters, equipment, drains, handholds, manholes, pipes, pipelines, splice boxes, surface location markers, tunnels, utilities, vaults, and other appurtenances or tangible things owned, leased, operated, or licensed by an owner or person, that are located or are proposed to be located in the public right-of-way. (3582-11/02)
- (g) "Franchise" granted by the City of Huntington Beach or the state of California is a contract granting special privileges to use the public right-of-way. It is not intended that this chapter of the Municipal Code impose additional rules or regulations which are inconsistent with the rights or obligations under the franchise or confer authority to the City that conflicts with the State's Public Utilities Code or the jurisdiction of the California Public Utilities Commission. (3582-11/02)
- (h) "Owner" is defined as that person who is responsible for the project. (3582-11/02)
- (i) "Permit" or "permit to excavate" shall mean an encroachment permit to perform a project as it has been approved or may be amended or renewed by the Department. (3582-11/02, 3780-10/07)
- (j) "Permittee" shall mean the applicant to whom a permit has been granted by the Department in accordance with this chapter. (3582-11/02, 3780-10/07)
- (k) "Person" shall mean any natural person, owner, corporation, partnership, public utility franchise, or any governmental agency, including any agency other than the City of Huntington Beach, Department, the state of California, or United States of America. (3582-11/02, 3780-10/07)
- (l) "Project" for purposes of this chapter shall mean any activity permitted under this chapter, including but not limited to excavation, construction, demolition, obstruction of right-of-way, repair and building. (3582-11/02)
- (m) "Public right-of-way" shall mean the area across, along, beneath, in, on, over, under, upon, and within the dedicated public alleys, boulevards, courts, lanes, places, roads, sidewalks, streets, ways and City owned properties within the City, as they now exist or hereafter will exist and which are or will be under the permitting jurisdiction of the Department of Public Works. (3582-11/02)

12.13.020 Erecting utility structures--Authority. It is unlawful for any person, without a City franchise and/or City encroachment permit, or other authority from the Director, to erect any telegraph, telephone, electric light or, transmission poles, or facilities on or in any walk, street, alley or public place in this City, or to stretch any wires or cables along or across said streets; or to lay any gas, oil or water pipes, or other pipelines along or across any streets in the City. (3582-11/02, 3780-10/07)

As of March 17, 2007, the California Supreme Court, in the case entitled *Sprint Technology PCS v. County of San Diego*, will determine whether California Public Utilities Code Section 7901 grants a state-wide franchise to use the public rights-of-way for the purpose of installation of wireless communication facilities. Pending resolution of this legal question, any applicant seeking to use the public right-of-way must enter into a City franchise to install wireless communication facilities. The franchise shall provide that the franchise fee payments shall be refunded to the applicant and the franchise become null and void if and when the California Supreme Court establishes that the provider has a state-wide franchise to install a wireless communication facility in the public right-of-way. (3780-10/07)

12.13.030 Emergency situations. Nothing contained in this chapter shall be construed to prevent any person from taking any action necessary for the preservation of life or property when such necessity arises during days or times when the Department is closed. In the event that any person undertakes any project, as defined herein, in the public right-of-way made necessary by an immediate threat to health, safety, life or property, such person shall apply for an emergency permit within four hours after the Department's offices are first opened. The applicant for an emergency permit shall submit a written statement of the basis of the emergency action and describe the work performed.

(3582-11/02, 3780-10/07)

12.13.035 Underground Facilities. All facilities constructed within the public right-of-way shall be undergrounded except for antennae and those exempt from undergrounding pursuant to section 17.64.050. (3780-10/07)

12.13.040 Obstructing or construction within public way--Permit required. It is unlawful for any person to construct, repair, use, or obstruct any street, alley, sidewalk or public property within this City by placing thereon or therein any utility, building, stand, counter, fence, lunch wagon, storage container, bandstand, structure, building material or tools, gravel, dirt, excavation or obstruction of any kind whatsoever or performing any demolition, without a permit having first been issued therefor as hereinafter provided. (3582-11/02)

12.13.050 Duration and validity.

- (a) Permits shall be void if the project, including restoration, has not been completed within sixty days; provided, however, that the Director, in his or her discretion for good cause shown, may issue one thirty-day extension to the start date and one thirty-day extension to the duration of a permit upon written request from the permittee and payment of any applicable fees. The Director may issue additional extensions as may be deemed appropriate in his or her discretion.

(3582-11/02, 3780-10/07)

- (b) Permits are not transferable without proof of current business license issued by the City of Huntington Beach for the assignee and any subcontractors who will be providing service under the permit and evidence of insurance as specified by Resolution of the City Council, and the written consent of the permittee and the Director.

(3582-11/02, 3780-10/07)

12.13.060 Penalty for exceeding time restrictions. A penalty shall be imposed upon any person who does not complete work requiring road or lane closures within the established time frame. The penalty shall be in an amount set by resolution of the City Council and shall be based upon estimated costs to the traveling public due to delays and additional travel distance around roadway closures. (3582-11/02)

12.13.070 Permit--Fees. The Director shall not issue any permit except upon the payment of plan check, inspection and permit fees, set by resolution of the City Council. The State of California and the County of Orange, including entities such as special districts organized under state law, are fee exempt. At the discretion of the Director, and upon proven City history of prompt payment and company fiscal integrity, the Director may request and make arrangements for alternative methods of collecting payment such as monthly billings. (3582-11/02)

12.13.080 Required information for permit. Before any project mentioned in this chapter may be commenced, the person doing such work must provide the following information: (3582-11/02)

- (a) Applications for permits shall be submitted in the format and manner specified by the Director and shall contain: (3582-11/02)

1. The name, address, telephone, and facsimile number of the applicant. Where

- an applicant is not the owner of the facility to be installed or maintained in the public right-of-way, the application also shall include the name, address, telephone, and facsimile number of the owner. If the application is submitted by an authorized agent of the Applicant or Owner, written authorization from the Applicant or Owner of facility shall be provided. (3582-11/02, 3780-10/07)
2. A description of the location, purpose or use, method of construction, and surface and subsurface area of any proposed project. (3582-11/02)
 3. Engineering plans, specifications and a network map of the facilities to be located within the public right-of-way, including a map in electronic and/or other form required by the City. The plans and specifications shall show:
(3780-10/07)
 - a. The location of all existing and proposed facilities in the public right-of-way along proposed route including the type and location of existing and proposed pedestals and other above ground facilities. (3780-10/07)
 - b. Facility Information. Photographs or artist renderings of all proposed facilities for the work area as well as their locations, dimensions, and color. Any modifications to plans and specifications must be reviewed and approved by the Director before modifications can be implemented by Applicant. In addition, Applicant shall provide the Director with engineering base maps identifying Applicant's existing underground and aerial utility facilities, poles, trench routes, and locations for above-ground equipment in the work area in both electronic form (digital or otherwise as specified by the Director) to the extent available and hard-copy form.
(3780-10/07)
 - c. Hours of Construction. All construction shall be accomplished and maintained between the hours specified by the Director. Construction shall not interfere with the existing or known future services of the City or private or public third parties. (3780-10/07)
 - d. Telephone Contact. Applicant shall provide the Director with a telephone contact number, answered twenty-four (24) hours a day during the construction period, to enable the Director to report any concerns regarding construction of the facilities. After business hours such calls will be routed to an on-call supervisor. In the event that the Director reports any concerns to Applicant, Applicant shall respond in a timely manner. Applicant shall immediately correct any adverse impact to the City's use or operations or the use or operations of a third party caused by Applicant's construction activities in the public right-of-way at no cost to the City. Safety violations will be cause for immediate project shut-down.
(3780-10/07)
 - e. The specific trees, structures, improvements, facilities and obstructions, if any that Applicant proposes to temporarily or permanently remove or relocate. (3780-10/07)
 4. Information regarding any excess capacity that will exist in such ducts or conduits after installation of Applicant's facilities. (3780-10/07)
 5. A Traffic Control Plan. In accordance with such guidelines established by the City. (3780-10/07)
 6. The proposed start date of project. (3582-11/02, 3780-10/07)

7. The proposed duration of the project, which shall include the duration of restoration of the public right-of-way physically disturbed by the project. (3582-11/02, 3780-10/07)
 8. A current business license issued by the City of Huntington Beach for the applicant and any subcontractors who will be providing services under the permit. (3582-11/02, 3780-10/07)
 9. Evidence of insurance for the applicant and owner as specified by Resolution of the City Council. (3582-11/02, 3780-10/07)
 10. Companies may also be required by the Director to provide reasonable advance notice to the public via a public notification plan of the proposed quantity, precise dimensions, design, color, type, potential noise and location of above-ground facilities pursuant to guidelines promulgated by the Director. The plan is subject to the prior approval of the Director. The guidelines shall take into account the area covered and impacts of the above-ground facilities. (3780-10/07)
 11. Certifications. Upon request, Applicant shall provide copies of certifications, licenses, permits, franchises or other applicable approvals to construct and operate the facilities and to offer or provide the services. Applicant shall also provide a certification that the Applicant will comply with all applicable local state and federal requirements in the installation, operation, maintenance, or removal of its facilities. (3780-10/07)
 12. Any other information that may reasonably be required by the Department. (3582-11/02, 3780-10/07)
- (b) Action on applications for permits as provided in this Chapter. (3582-11/02)
1. After receipt of an application for a permit, the Department shall determine whether an application is complete. If the application is deemed to be incomplete, the Department shall advise the applicant in writing of the reasons for rejecting the application as incomplete. (3582-11/02, 3780-10/07)
 2. If the application is deemed to be complete, the Department, in its discretion, shall deny, approve, or conditionally approve the application. In order to preserve and maintain the public health, safety, welfare, and convenience, the Department may condition a permit with specified requirements including, but not limited to, those that limit or modify the facilities to be installed or maintained, the location of the facilities to be installed or maintained, and the time, place, and manner of work to be performed. (3582-11/02, 3780-10/07)
 3. If the application is denied, the Department shall advise the applicant in writing of the basis for denial. (3582-11/02, 3780-10/07)
 4. If the application is approved or conditionally approved, the Department shall issue a permit to the applicant. (3582-11/02, 3780-10/07)
 5. It is unlawful for any permittee to make, to cause, or permit to be made, any project in the public right-of-way outside the boundaries, times, and description set forth in the permit. (3780-10/07)

12.13.090 Permit Denial. The determination to grant or deny a permit shall be based upon the criteria set forth in this section. The Director shall consider the following: (3780-10/07)

1. The capacity of the public right-of-way to accommodate

Applicant's proposed facilities and facilities known to be needed in the future. (3780-10/07)

2. The capacity of the public right-of-way to accommodate known additional facilities if the permit is granted. (3780-10/07)
3. The damage or disruption, if any, to the public right-of-way or any public or private facilities, improvements, aesthetics, services, pedestrian or vehicle travel or landscaping if the permit is granted. (3780-10/07)
4. Visibility or sight distance impacts to other users of the public right-of-way. (3780-10/07)
5. The proposed facilities impact the design and construction of public streets, as well as intersections between City streets and roadways to ensure, to the maximum extent feasible, that streets and intersections are designed and constructed in a manner that will not adversely impact the health, safety and welfare of the citizens of the City of Huntington Beach and others. (3780-10/07)

12.13.091 Construction work--Permit denial—Appeal in general. In the event the Director refuses for any reason to issue a permit, the applicant may petition the Public Works Commission, in writing, for a hearing to consider said request. Any decision of the Commission, including but not limited to decisions to grant or deny permits, is appealable to the City Council who will consider the application de novo. (3582-11/02, 3780-10/07)

12.13.100 Orders, regulations, and rules of City Departments. All work in the public right-of-way pursuant to this chapter shall be performed in accordance with the standard plans and specifications of the Department, the design manual, and any Department orders, regulations, or rules, except where the Director grants, for good cause shown, prior written approval to deviate from such standard plans and specifications, the design manual, orders, regulations, or rules. (3582-11/02, 3780-10/07)

12.13.110 Construction work--Licensed contractor required. No construction work of any kind shall be done or performed upon any public right-of-way, in the City unless done according to City orders, regulations, rules of standard plans and by a contractor licensed by the State of California to perform that class of work. (3582-11/02)

12.13.120 Street excavation moratorium - no permit shall be issued. In order to preserve the ride quality, structural integrity and appearance of newly constructed or renovated streets, permission to excavate in newly constructed or renovated streets will not be granted for three (3) years after completion of street renovation as shown by the filing of a Notice of Completion. Applicants shall determine alternate methods of installing utilities or making necessary repairs to avoid excavating in newly renovated streets. Exceptions to the above are as follows: (3582-11/02)

- (a) Emergency which endangers life or property. (3582-11/02)
- (b) Interruption of essential utility service. (3582-11/02)
- (c) Work that is mandated by legislation applicable to the City or person performing the excavation or ordered by any court or governmental entity with jurisdiction over the City of Huntington Beach. (3582-11/02)
- (d) Service lateral for buildings or facility where the applicant has no other means of providing service exists. (3582-11/02)
- (e) Other situations deemed by the City's Public Works Commission to be in the best interest of the general public. (3582-11/02)

All permits which are issued under (a) through (e) above shall be in accordance with the specified enhanced standards, details and specifications established by and on file in the Department, unless otherwise approved by the Director. (3582-11/02, 3780-10/07)

12.13.130 Underground service alert. Any person excavating in the public right-of-way shall comply with the requirements of the underground service alert regarding notification of excavation and marking of subsurface facilities. It shall be the responsibility of Applicant to mark its facilities with search wire if possible and to locate and mark or otherwise visibly indicate and alert others to the location of its underground facilities before employees, agents, of independent contractors of any entity perform work in the marked-off area. Applicant shall participate in and adhere to the practices of Underground Services Alert ("USA") or its successor notification system and provide at least forty-eight (48) hours prior notice to USA prior to any excavation.

(3582-11/02, 3780-10/07)

12.13.140 Stop work order, permit modification, and permit revocation. When the Director has determined a person has violated this chapter, or any condition of the permit, or that an excavation poses a hazardous situation or constitutes a public nuisance, public emergency, or other threat to the public health, safety, or welfare, or when the Director determines there is a paramount public purpose, the Director is authorized to issue a stop work order, to impose new conditions upon a permit, or to suspend or revoke a permit by notifying the permittee of such action in writing. (3582-11/02)

12.13.150 Restoration.

- (a) Like New Restoration. For all projects for which any permit under this Chapter has been issued, the permittee shall restore or cause to be restored any area upon which work has been performed to like new condition. Such restoration shall be done in the manner prescribed by the standard plans and specifications, the design manual, orders, regulations, and rules of the Department. (3582-11/02, 3780-10/07)
- (b) Modification to Requirements. Upon written request from the permittee, the Director, in his or her discretion and for good cause shown, may approve in writing modifications to the requirements of this section. (3582-11/02)

12.13.160 Repair by the Department.

- (a) In the event any person(s) fails, neglects, or refuses to repair or restore any condition pursuant to the Director's notice as set forth in this chapter, the Director shall repair or restore, or cause to be repaired or restored, such condition in such manner as the Director deems expedient and appropriate. The person(s) identified by the Director as the responsible party shall compensate the Department for any costs associated with the administration, construction, consultants, equipment, inspection, notification, remediation, repair, restoration, or any other actual costs incurred by the Department or other departments or agencies of the City made necessary by reason of the repair or restoration undertaken by the Department. (3582-11/02, 3780-10/07)
- (b) Repair or restoration by the Department in accordance with this chapter shall not relieve the person(s) from any and all liability at the site of the repair or restoration, including, but not limited to, future failures for any portions of work completed by permittee. (3582-11/02, 3780-10/07)

12.13.170 Emergency remediation by the Department.

- (a) If, in the judgment of the Director, the site of an excavation is considered hazardous, constitutes a public nuisance, public emergency, or other imminent threat to the public health, safety, or welfare that requires immediate action, the Director shall order the condition remedied by written, oral, telephonic or facsimile communication to the owner,

applicant, or any agent thereof and shall designate the owner or applicant as the responsible party. (3582-11/02)

- (b) If the responsible party is inaccessible or fails, neglects, or refuses to take immediate action to remedy the condition as specified in said communication, the Director shall remedy the condition or cause the condition to be remedied in such manner as the Director deems expedient and appropriate. The person(s) identified by the Director as the responsible party shall compensate the Department for any reasonable costs associated with the administration, construction, consultants, equipment, inspection, notification, remediation, repair, restoration, or any other actual costs incurred by the Department or other departments or agencies of the City made necessary by reason of the emergency remediation undertaken by the Department. (3582-11/02, 3780-10/07)

12.13.180 Suspension of applications and permits. No person subject to any outstanding violation of this chapter shall apply for nor be issued any permit hereunder. (3582-11/02)

12.13.190 Identification of visible facilities. All facilities installed pursuant to a permit that are visible from the surface of the public right-of-way shall be clearly identified with the name of the current owner of the facilities. Upon demand of the Director, within six months of change in ownership of a facility(ies), the identification required by this section shall indicate the new owner. (3582-11/02)

12.13.200 City Repaving Plan. The Director of Public Works shall prepare a two (2) year repaving plan showing the street surfacing planned by the City for the next two (2) years. The two year repaving plan will be made available to utilities at all times to assist them. (3582-11/02)

12.13.210 Coordination with City.

- (a) Prior to designing facilities and applying for an excavation permit in the City's public right-of-ways, applicants shall review other utilities' master plans and the City's two (2) year repaving plan on file with the Director. The applicant shall coordinate, to the extent practicable, with other planned utility and street work shown on such plans to minimize damage to, and avoid undue disruption and interference with the public use of such public rights-of-way. (3582-11/02)
- (b) To avoid future excavations and to reduce the number of street excavations, telecommunication companies shall be requested, when practical, to install spare conduits. (3582-11/02)
- (c) Permit Available On-Site. The permit or a photo duplicate shall be available for review at the site of the excavation for the duration of the excavation and shall be shown, upon request, to any police officer or any employee of a City agency, board, commission, or Department with jurisdictional responsibility over activities in the public right-of-way. (3780-10/07)

12.13.220 Blanket Permits. The Director may issue a blanket permit to an Applicant to make excavations for utility service connections, for the location of trouble in utility conduits or pipes and for making repairs thereto, or for emergency purposes. Blanket permits shall be issued on a yearly basis only, and shall authorize only excavations referred to in this section and shall comply with all requirements of this chapter not inconsistent with this section and all fees set by resolution of the City Council shall be paid. (3780-10/07)

12.13.230 Construction Status Report.

- (a) During construction, Applicant shall, at the request of the Director, submit to the Director regular progress reports describing in detail the status of construction in relation to the plans

and specifications. The first report shall be submitted within seven days after commencement of construction and shall be updated every seven days thereafter, as may be required by the permit. Work plans shall be provided in advance to the Director for review and approval. (3780-10/07)

- (b) Notification. Applicant shall provide written notification to the Director of any construction and/or maintenance activities undertaken in public right-of-way, whether undertaken pursuant to permit or otherwise, within five business days of commencement of such activities unless the activities have been previously reported to the Director. (3780-10/07)

12.13.240 Conditions of Use of Public Right-of-Way.

- (a) All facilities of Applicant shall be so located, constructed, installed and maintained so as not to endanger, interfere with or limit the usual and customary use and/or traffic and travel upon the public right-of-way as well as adjacent private property pursuant to a traffic control plan to be approved by the Director. (3780-10/07)
- (b) In the event Applicant creates a hazardous or unsafe condition or an unreasonable interference with property, such Applicant shall remove or modify that part of the facility to eliminate such condition from the subject property. (3780-10/07)
- (c) Applicant shall not place equipment where it will interfere with existing and known future City uses of the public right-of-way, with the rights of private property owners as determined by the Director, with gas, electric, cable, telephone fixtures, water, sewer and storm drain lines and appurtenances, fire hydrants, traffic signal facilities, street light facilities, or any wastewater stations, with any traffic control system, or any other City facility. (3780-10/07)
- (d) Applicant, at its own expense and pursuant to a timeline approved by the Director, shall protect the public right-of-way and support or temporarily disconnect or relocate any of Applicant's facilities when necessitated by reason of: (3780-10/07)
 - 1. Traffic conditions; (3780-10/07)
 - 2. Public safety; (3780-10/07)
 - 3. Temporary or permanent street closure not for the benefit of a private party; (3780-10/07)
 - 4. Street construction or resurfacing; (3780-10/07)
 - 5. A change or establishment of street grade; and (3780-10/07)
 - 6. Installation of sewers, water and storm drain lines and appurtenances, lift stations, street light facilities, traffic signal facilities, tracks, or any other public use of the right-of-way. (3780-10/07)

12.13.250 Excavations.

- (a) Applicability. Each excavation in the public right-of-way pursuant to this chapter shall be performed in accordance with this chapter and with the standard plans and specifications of the Department and any Department orders, regulations or rules, except where the Director, at his or her discretion, grants prior written approval to deviate from the standard plans and specifications, orders, or regulations. The Director shall develop guidelines to implement the granting of waivers authorized pursuant to this chapter. (3780-10/07)
- (b) Notices. The Director may require reasonable notice from Applicant if Applicant excavates or causes an excavation in the public right-of-way in a manner that, due to duration or location of the excavation, has the potential to disrupt traffic flow or adjacent properties. All notices are subject to the prior review of the Director and shall include: (3780-10/07)

1. Post and maintain notice at the site of the excavation. The notice shall include the name, telephone number, and address of Applicant, a description of the excavation to be performed and the duration of the excavation. The notice shall be posted along any street where the excavation is to take place at least seventy-two (72) hours prior to commencement of the excavation. (3780-10/07)
 2. At least ten calendar days prior to commencement of the excavation, Applicant shall provide written notice delivered by United States mail to each property owner on the street affected by the excavation and each affected neighborhood and merchant organization that is listed in the latest Assessor's Roll for names and addresses of property owners shall be used for the mailed notice. This notice shall include the same information that is required for the posted notice pursuant to this subsection (b)(1) and the name, address, and twenty-four (24) hour telephone number of a person who will be available to provide information to and receive complaints from any member of the public concerning the excavation, or (3780-10/07)
 3. At least ten calendar days prior to commencement of the excavation, Applicant shall also deliver a written notice to each dwelling unit on the block(s) affected by the excavation. This written notice shall include the same information that is required for the written notice pursuant to subsection (b)(2) of this section. (3780-10/07)
- (c) Notice for Emergency Excavation. For emergency excavation, Applicant shall post and maintain notice at the site of the excavation during the construction period. The notice shall include the name, telephone number, and address of Applicant, a description of the excavation to be performed, and the duration of the excavation. The notice shall be posted along any street where the excavation is to take place. (3780-10/07)
- (d) Marking of Subsurface Facilities. If Applicant excavates in the public right-of-way, it shall comply with the requirements of the underground service location regarding notification of excavation and marking of subsurface facilities. Applicant shall provide underground service location with the assigned number of the permit to excavate or other information as may be necessary to properly identify the proposed excavation. (3780-10/07)